



April 6, 2000

Mr. James G. Nolan
Supervising Attorney
Legal Department-Information Release
Texas Workforce Commission
101 E. 15th Street
Austin, Texas 78778-0001

OR2000-1331

Dear Mr. Nolan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134239.

The Texas Workforce Commission (the "commission") received a request for certain materials submitted to the commission by Andersen Consulting ("Andersen"). You state that the submitted information may be excepted from disclosure under section 552.110 of the Government Code. You have requested a decision from this office pursuant to section 552.305 of Government Code, which authorizes parties with a privacy or proprietary interest in requested information to submit arguments to this office as to why the information is excepted from required public disclosure. Andersen has submitted arguments to this office for withholding the information at issue. Specifically, Andersen contends that the information at issue is protected from public disclosure under both branches of section 552.110 of the Government Code. We have considered the exception claimed and reviewed the submitted information.

Section 552.110 protects: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 at 2 (1990). In determining whether particular information constitutes a trade secret, this office considers

the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.¹ *Id.* This office has held that if a governmental body takes no position with regard to the application of the trade secret branch of section 552.110 to requested information, we must accept a private person's claim for exception as valid under that branch if that person establishes a *prima facie* case for exception and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5-6 (1990).

As noted above, section 552.110 protects both trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. The commercial or financial branch of section 552.110 requires the business enterprise whose information is at issue to make a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would result from disclosure. *See* Open Records Decision No. 661 (1999).

Based upon our review of the documents and the arguments presented by Andersen, we conclude that the submitted information constitutes a trade secret excepted from disclosure under section 552.110. Therefore, you may withhold the submitted information.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

¹The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are: (1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

²In your brief, you assert that you are seeking a determination only as to the proprietary nature of the Work Plan portions of the Proposal and the Proposal Clarifications, which you submitted. You state that the remaining information responsive to this request has been released. Following a letter from this office requesting a complete copy of the specific information requested, Andersen submitted to this office the documents it claims are excepted from disclosure. This letter ruling authorizes the withholding of those documents claimed to constitute trade secret and submitted by both the commission and Andersen.

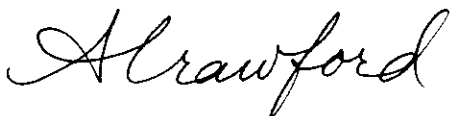
full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "A Crawford".

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/ch

Ref: ID# 134239

Encl. Submitted documents

cc: Mr. Mark Holloway
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(w/o enclosures)

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